

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed January 9, 2006. At the time of the Office Action, Claims 1-18 and 22-25 were pending in the Application. Applicant amends Claims 1, 7, 13, and 22 and cancels Claims 2, 8, 14, and 23 without prejudice or disclaimer. Applicant's amendments and cancellations have been done to advance prosecution in this case and not to overcome prior art. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejection

The Examiner rejects Claims 1, 3-7, 9-13, and 15-18 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,439,859 issued to Donnan (hereinafter "*Donnan*"). Applicant respectfully traverses this rejection for the following reasons. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. *Donnan* does not disclose, teach, or suggest, either expressly or inherently, each and every element of the claims.

Applicant respectfully submits that each of the limitations of Claim 1 is not disclosed, taught, or suggested by *Donnan*. For example, *Donnan* does not disclose, teach, or suggest "determining an allowed number of retransmissions for the frame based on the position of the frame in the set of related frames, wherein the allowed number of retransmissions for the frame increases as the position of the frame in the set of related frames increases" as recited in Claim 1. Because *Donnan* fails to teach at least this limitation, Applicant respectfully submits that *Donnan* cannot anticipate Claim 1 under 35 U.S.C. §102(b). Thus, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependents.

Independent Claims 7, 13, and 22 each recite certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 1, *Donnan* does not disclose, teach, or suggest, either expressly or inherently. Therefore, Applicant respectfully requests reconsideration and allowance of independent Claims 7, 13, and 22 together with their dependents.

Section 103 Rejection

The Examiner rejects Claims 22 and 24-25 under 35 U.S.C. §103(a) as being unpatentable over *Donnan* in view of U.S. Patent No. 6,618,375 B2 issued to Rezaifar et al. (hereinafter “*Rezaifar*”). Applicant respectfully traverses this rejection for the following reasons. To defeat a patent under 35 U.S.C. §103(a), the claimed *combination* must be obvious. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 223 U.S.P.Q. 603 (Fed. Cir. 1984). Therefore, it is essential to view the invention as a whole, taking each element into account as well as the advantages, properties, utilities, and results of the invention. *In re Chupp*, 816 F.2d 643, 2 U.S.P.Q.2d 1437 (Fed. Cir. 1987).

Applicant respectfully submits that the combination of *Donnan* and *Rezaifar* fails to disclose, teach, or suggest each limitation recited in Applicant’s Claims 22 and 24-25. As discussed above, *Donnan* does not disclose, teach, or suggest each limitation in Claim 22. This deficiency is not cured by combining *Donnan* and *Rezaifar*. Therefore, the combination of *Donnan* and *Rezaifar* does not disclose, teach, or suggest each limitation in Claim 22. Claims 24-25 are dependent claims that include limitations of independent Claim 22, which has been shown to be allowable, and add additional elements that further distinguish the combination. The combination as recited does not disclose, teach, or suggest the limitations recited in Claims 22 and 24-25. Accordingly, Applicant respectfully requests reconsideration and allowance of these claims.

Allowable Subject Matter

The Examiner objects to Claims 2, 8, 14, and 23 as being dependent upon a rejected base claim, but would allow the claims if rewritten in independent form including all of the limitations of the base claim and any intervening claims. *Office Action*, p. 6. Applicant incorporates limitations of Claim 2 into Claim 1, Claim 8 into Claim 7, Claim 14 into Claim 13, and Claim 23 into Claim 22 and cancels Claims 2, 8, 14, and 23. Accordingly, Applicant respectfully submits that Claims 1, 7, 13, 22, and their dependents are allowable and requests reconsideration and allowance of all pending claims.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims. If the Examiner believes that a telephone conference would advance prosecution of this Application in any manner, the undersigned attorney for the Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Keiko Ichiye at (214) 953-6494.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Keiko Ichiye
Reg. No. 45,460

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Customer No. **05073**